Supreme Court, U.S.
FILED

04-384 JUN 14 2004

OFFICE OF THE CLERK

No.

IN THE
SUPREME COURT OF THE UNITED STATES

AVA MAUREEN SAWYER, PETITIONER

vs.

DEAN S. WORCESTER
&
PRESTON E. CONNER, SR. AND
ESTATE OF PRESTON E. CONNER, SR.,
RESPONDENTS

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF VIRGINIA

APPENDIX
TO
PETITION FOR WRIT OF CERTIORARI

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Chester, Virginia 23831
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APPENDIX A

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 9th *day of* January, 2004.

Ava Maureen Sawyer,
Appellant,

against

Record No. 032231
Circuit Court No. 93-149

Dean S. Worcester, et al.,
Appellees.

From the Circuit Court of Frederick County

On December 3, 2003 came the appellant, in proper person, and filed a motion "for the Court to accept corrected petition for appeal."

On consideration whereof, the Court grants the motion and the corrected petition is considered filed.

Upon review of the record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

On further consideration, all outstanding motions are denied.

A Copy,
Teste:
Patricia H. Krueger, Clerk

By: [indecipherable signature]
Deputy Clerk

APPENDIX B

VIRGINIA:
IN THE CIRCUIT COURT OF FREDERICK COUNTY

PRESTON E. CONNER, SR.

V. IN CHANCERY NO: 93-149

AVA M. SAWYER
And
DEAN S. WORCESTER

ORDER

CAME the 14th day of April, 2003, the Defendant, Ava M. Sawyer, in person, and also came John F. Lanham, Esquire, Counsel for Dean Worcester; this matter coming before the Court for review of Sawyer's compliance with the order of this Court for production of certain documents. This case was heard in the Warren County Circuit Courthouse.

WHEREUPON, the documents produced were reviewed and further testimony was taken from Sawyer. The Court did then hear arguments. The Court did then take this matter under advisement.

WHEREFORE, after further consideration and review, the Court does now find that Sawyer has sufficiently answered the debtor interrogatories and has substantially complied with the Court's directives in respect to the production of documents.

ACCORDINGLY, this matter is now concluded, and insofar as same concerns these debtor interrogatories, it is dismissed and removed form [sic] the active docket of this Court. This Order is entered without endorsements pursuant to Rule 1:13. Written objections may be filed with fifteen (15) days of the entry of this Order.

ENTER: MAY 22 2003 *Dennis L. Hupp*
Judge

APPENDIX C

VIRGINIA:
IN THE CIRCUIT COURT OF FREDERICK COUNTY

PRESTON E. CONNER, SR.

V. IN CHANCERY NO: 93-149

AVA M. SAWYER
And
DEAN S. WORCESTER

ORDER

CAME the 31st day of March, 2003, the Defendant, Ava M. Sawyer, in person, and also came John F. Lanham, Esquire, Counsel for Dean Worcester; this matter coming before the Court for review of Sawyer's compliance with the order of this Court for production of certain documents. This case was heard in the Shenandoah County Circuit Courthouse.

WHEREUPON, the documents produced were reviewed and further testimony was taken from Sawyer. The Court did then hear arguments.

WHEREUPON, the Court did find that Sawyer has complied with the Court's directive in respect to information regarding a limited partnership and production of a Homestead Deed. The court did again direct Sawyer to:

(1) Produce bank statements for the First Market Bank checking account, specifically statements for the months of January, February, and March of 2003.

(2) Produce the passbook for her savings account at First Federal Savings Bank specifically covering the time period of January through March of 2003.

(3) As an alternative to producing the aforesaid bank records, pay over to counsel the sum of $8,595.43, a sum apparently in one or both accounts prior to their being transferred to Sawyer's mother.

(4) Produce the signed deed for real estate purportedly conveyed to Sawyers [sic] mother for the sum of $500.00.

(5) As an alternative to producing the said deed, pay over to counsel the sum of $500.00.

This matter was continued to April 14, 2003, at 3:00 p.m., for review of Sawyer's compliance and for possible final disposition. This case will be heard in the Warren County Circuit Courthouse that day.

This Order is entered without endorsements pursuant to Rule 1:13. Written objections may be filed with fifteen (15) days of the entry of this Order.

ENTER: MAY 22 2003

Dennis L. Hupp
JUDGE

APPENDIX D

VIRGINIA:
IN THE CIRCUIT COURT OF FREDERICK COUNTY

PRESTON E. CONNER, SR.

v. IN CHANCERY NO: 93-149

AVA M. SAWYER
And
DEAN S. WORCESTER

ORDER

CAME the 20th day of March, 2003, the Defendant, Ava M. Sawyer, in person, and also came John F. Lanham, Esquire, Counsel for Dean Worcester; this matter coming before the Court for hearing on whether Sawyer is in contempt of this Court by reason of her failure to appear for debtor interrogatories on May 10, 1995, and also for determination as to whether Sawyer will now submit to those interrogatories.

WHEREUPON, Sawyer advised that she understood her right to counsel, and she freely and voluntarily, and knowingly and intelligently, waived this right.

WHEREUPON, Sawyer stated again her opposition to this proceeding on grounds that the judgment against her is invalid for want of jurisdiction, and she asserted that her appearance on this date is not voluntary and that she does not make a general appearance herein by her presence on this date.

WHEREUPON, the Court announced again that it would not reconsider the previous determination of this Court (Judge Arthur Sinclair presiding) that the subject judgment is valid,

and the Court did conduct an evidentiary hearing regard her failure to appear for debtor interrogatories on May 10, 1995.

IN CONSIDERATION WHEREOF, the Court did find Sawyer guilty of contempt for her willful failure to appear for debtor interrogatories on said date. After affording Sawyer her right of allocution, the Court did sentence her to thirty (30) days in jail. The Court then suspended execution of this sentence on the following conditions:

(1) She shall be of good behavior and not violate the laws of any jurisdiction; and,

(2) She shall submit to debtor interrogatories and comply with the directives of the Court with respect to documentary support of her answers to those interrogatories.

WHEREUPON, the Court did inquire as to whether Sawyer would now submit to the debtor interrogatories, and she did submit to same.

WHEREUPON, the Court was advised that counsel for Dean Worcester seeks production of certain documents as identified on the record of the proceedings, and the Court did order Sawyer to produce same by March 31, 2003.

This matter was continued to March 31, 2003, at 4:00 p.m., for review of the production of documents and for possible final disposition. This case will be heard [sic] the Shenandoah County Circuit Court that day.

This Order is entered without endorsements pursuant to Rule 1:13. Written objections may be filed with fifteen (15) days of the entry of this Order.

ENTER: MAY 22 2003

Dennis L. Hupp
JUDGE

APPENDIX E

VIRGINIA:
IN THE CIRCUIT COURT OF FREDERICK COUNTY

PRESTON E. CONNER, SR.

v. IN CHANCERY NO: 93-149

AVA M. SAWYER
And
DEAN S. WORCESTER

ORDER

CAME the 10th day of March, 2003, the Defendant, Ava M. Sawyer, in person upon return of the capias previously issued by this Court; and also came John F. Lanham, Esquire, Counsel for Dean Worcester; this matter also coming before the Court for debtor interrogatories. This matter was heard in the Warren County Circuit Courthouse.

WHEREUPON, Sawyer advised that she had instructed her attorney, Jeffrey B. Rice, Esquire, not to attend this proceeding, and after determining that Sawyer understood her right to counsel, the Court did find that she freely and voluntarily, and knowingly and intelligently, waived this right.

WHEREUPON, Sawyer stated her opposition to this proceeding on grounds that the judgment against her is invalid for want of jurisdiction, and she asserted that her appearance on this date is not voluntary and that she does not make a general appearance herein by her presence on this date.

WHEREUPON, Sawyer did advise the Court that she was prepared for a hearing on whether she is [sic] contempt

of this Court for her failure to appear for debtor interrogatories on November 13, 2000, and the Court did conduct an evidentiary hearing in this regard.

WHEREUPON, the Court announced that it would not reconsider the previous determination of this Court (Judge Arthur Sinclair presiding) that the subject judgment is valid, and the Court did find Sawyer guilty of contempt for her willful failure to appear for debtor interrogatories on November 13, 2000. After affording Sawyer her right of allocution, the Court did sentence her to sixty (60) days in jail.

WHEREUPON, the Court did inquire as to whether Sawyer would now submit to the debtor interrogatories, and she did refuse.

ACCORDINGLY, [sic] Court finds her in civil contempt of this Court for her refusal to submit to debtor interrogatories, and for this reason she shall be held in jail until she submits to said interrogatories.

This matter was continued to March 20, 2003, at 9:00 a.m. for review and for opportunity to submit to the debtor interrogatories and for hearing on whether Sawyer is in contempt of this Court for her failure to appear for debtor interrogatories on May 10, 1995. This hearing will be held at the Joint Judicial Center in Winchester, Virginia.

This Order is entered without endorsements pursuant to Rule 1:13. Written objections may be filed with fifteen (15) days of the entry of this Order.

ENTER: MAY 22 2003

Dennis L. Hupp
JUDGE

APPENDIX F

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday *the* 4th *day of* December, 2000.

Ava Maureen Sawyer, Appellant,

against Record No. 001869
Circuit Court No. C93-149

Dean S. Worcester, et al., Appellees.

From the Circuit Court of Frederick County

Finding that the order appealed from is not a final, appealable order, the Court dismisses the petition for appeal filed in the above-styled case.

This dismissal is without prejudice to the right of the appellant to appeal a final order of the trial court.

A Copy,

Teste:
David B. Beach, Clerk

By:
Deputy Clerk

APPENDIX G

VIRGINIA:
IN THE CIRCUIT COURT OF FREDERICK COUNTY

PRESTON CONNER, SR.,
Plaintiff

v. In Chancery No. 93-149

AVA M. SAWYER, ESQ.,
Defendant.

ORDER

It has come to the attention of this Court that Ava Sawyer, by Jeffrey B. Rice, Esq., through a continued special appearance, has requested the Court to reconsider its previous rulings. The Court made clear on April 25, 2000, that its rulings would stand and as such the motion to reconsider is DENIED.

Endorsement by counsel of this Order is dispensed with pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia. The Clerk shall forward copies of this Order to counsel of record who may file their objections thereto within ten (10) days of the date of this Order.

ENTERED this the *30th* day of *May*, 2000.

Arthur W. Sinclair
Judge

APPENDIX H

VIRGINIA:
IN THE CIRCUIT COURT OF FREDERICK COUNTY

PRESTON CONNER, SR.,

Petitioner

v. IN CHANCERY NO. 93-149

Ava M. Sawyer, Esq.,

and

Dean S. Worcester, Esq.,

Co-Respondents

DECREE

This matter came on the 15th day of March 2000 for argument on the Motion to Quash and Motion to Vacate and Memorandum in Support, filed by special appearance of counsel by Jeffrey B. Rice, Esq., on behalf of Co-Respondent Ava M. Sawyer in the cause. John F. Lanham, Esq., appeared and argued as counsel on behalf of Co-Respondent Dean S. Worcester. Jeffrey B. Rice, Esq., by continued special appearance of counsel, appeared and argued on behalf of Co-Respondent Sawyer, who was present.

Upon consideration of the papers herein, including without limitation, all briefs and memoranda filed in connection with the Motion to Quash and Motion to Vacate, and the argument of counsel on March 15, 2000, for the reasons expressed by the Court on the record in open court on that date, it is

ADJUDGED, ORDERED, AND DECREED that the Motion to Quash and Motion to Vacate specially filed on behalf of Co-Respondent Ava M. Sawyer is hereby denied,

And it is further ADJUDGED and ORDERED that counsel for Co-Respondent Dean S. Worcester is granted leave to bring this matter on for such further proceedings as he may be advised at a regular Motions Day in respect to Worcester's Judgment Debtor Interrogatory proceedings and the Rule to Show Cause which was subsequently issued by this Court in connection therewith.

And this cause is continued and the bond of Co-Respondent Ava M. Sawyer is continued.

ENTERED this *25th* day of *April*, 2000.

Arthur W. Sinclair
Judge Arthur W. Sinclair

SEEN:
John F. Lanham
John F. Lanham, Esquire
VSB No. 18229
WELSH & LANHAM, P.L.C.
120 Edwards Ferry Road, NE
Leesburg, VA. 20176
Telephone -- (703) 777-5590
Fax -- (703) 777-5780
Counsel for Dean S. Worcester

SEEN AND OBJECTED TO:
Jeffrey B. Rice
Jeffrey B. Rice, Esquire
10521 Judicial Drive
Suite 307
Fairfax, VA 22030
Specially appearing as counsel for Ava M. Sawyer
Telephone -- (703) 591-8866

APPENDIX I

VIRGINIA:
IN THE CIRCUIT COURT FOR FREDERICK COUNTY

PRESTON E. CONNOR, SR.,
Complainant,

vs. In Chancery 93-149

AVA M. SAWYER, et al.,
Defendant. [sic]

Winchester, Virginia
Wednesday, March 15th, 2000

EXCERPT of the above-entitled matter which came on for hearing before THE HONORABLE ARTHUR SINCLAIR, Judge, in and for the Circuit Court of Frederick County, Winchester, Virginia , at 9:40 a.m.

APPEARANCES: On behalf of the Complainant [SIC]:
John F. Lanham, Esquire
Welsh & Lanham
120 Edwards Ferry Road, N.E.
Leesburg, Virginia 20176
(703) 777-5590

On behalf of the Defendant :
Jeffrey B. Rice, Esquire
10521 Judicial Drive
Fairfax, Virginia 22030
(703) 591-8866

THE COURT: As Mr. Lanham stated, this matter doesn't come on a disagreement between Ms. Sawyer and Mr. Worcester, it came on by Mr. Connor, who apparently

wanted to get this thing over with and couldn't arrive, or was dissatisfied with, I assume, Ms. Sawyer's claim as to attorney's fees. He knew he owed something, but there was a disagreement over what. So, he filed this original petition requesting the Court to determine those legal fees.

He has asked that the Court establish reasonable attorney's fees to be paid to either or both attorneys under the agreement which had been made, or in the alternative, the value of quantum meruit.

Mr. Worcester claimed lien for attorney's fees in the matter. That was in Connor v. Glaize. In Worcester's Answer to Connors' [sic] petition, he claims attorney's fees based upon a quantum meruit and asked the court to fix their fees, meaning the fees of both Ms. Sawyer and himself, and he says that Ms. Sawyer claims that he is not entitled to any fees.

At the trial before Judge Bumgardner on June 22 and June 23, 1994, Mr. Connors' [sic] position was that they [sic] agreed compensation to the attorneys was a one-third betterment of his economic position as the result of the litigation, and that after an appraisal, that amount should be, or he claims was, $134,000, of which he says $10,000 had been paid to Ms. Sawyer. Mr. Worcester agreed with that. Ms. Sawyer claimed that she was entitled to $215,000.

The Court, after hearing the evidence, made the determination that $134,000 was the proper amount of attorney's fees, heard argument that there was no agreement as to division of fees, and heard argument of Ms. Sawyer's claim that Worcester was not entitled to a fee.

The final result was that the Court Ordered [sic] Ms. Sawyer to pay Mr. Worcester $62,000 and to pay Mr. Connor an amount which is not important at this time. That Order was entered August 26th, 1994 and from that Order there was no appeal.

The reason that I think the Writ of Prohibition is important in this case is the fact that the application for a Writ of Prohibition makes the very same complaint that was made

in this case and I wonder how many times you can raise the same question in the Appellate Court by different methods. I don't believe you can do it more times. I don't know.

Be that as it may, I am not saying that the -- that the application for and the denial of the Writ of Prohibition by the Appellate Court stops the matter from being heard, but I do not believe that this is a matter of jurisdiction. Mr. Connor asked for the very thing in his suit in which he was the complainant, he asked for the very thing that Judge Bumgardner did, that the Court fix fees.

Now, assuming, without deciding, that Judge Bumgardner should have given more time or heard more of the evidence as the case may be, before he awarded, that doesn't mean that he did not have jurisdiction. He may have been wrong, but if he was wrong, the remedy in the case would be to apply for a Writ of Error with the Supreme Court which was not done. What he did became final 21 days after he signed this August 26th, 1994 Order and that case has been final ever since 1994 and here we are back here again on another tack of saying that he had no jurisdiction to enter the Order.

I think he had jurisdiction. I think, the case is final. This litigation has got to be put to rest. I have been over the file and over the file and over the file and I come up with the same conclusion every time, that this petition today should be and must be denied. This case is over and we have to accept the Order of August 26th, 1994.

Mr. Lanham, would you prepare an appropriate decree and submit it to Mr. Rice for his endorsement and acception [sic]?

MR. LANHAM: Yes, sir.

THE COURT: Mr. Rice, if you wish to mail it onto --

MR. RICE: Your Honor, as I indicated previously, there is a --

THE COURT: I'm sorry?

MR. RICE: As we had indicated earlier on, there is a fourth argument which is a due process argument which I indicated would not be argued today, but, in fact, if the Court --

THE COURT: Mr. Rice, this is -- this question is a matter

of law and not a matter of whether the Court has jurisdiction or had jurisdiction. It's a matter of law and not a matter of taking evidence.

MR. RICE: . . . but the fourth argument in the memorandum deals with due process . . . we're talking about due process, whether she was afforded a fair trial under the constitution, the due process clause of the constitution. It's an entirely different issue, it's not based upon an argument --

THE COURT: It would require a re-hearing of the case -- it seems to me -- of the case before Judge Bumgardner.

MR. RICE: No, it wouldn't. It would --

THE COURT: Well --

MR. RICE: -- require evidence of what --

THE COURT: Of what went on --

MR. RICE: -- the trial, not the actual facts of the trial itself. We're not talking about that, but as to how the trial was conducted. That's what that argument is about. That's where we're alleging that she was not afforded due process because of the way the trial itself went about. It would require evidence to decide that issue.

THE COURT: Mr. Rice, I'm sorry. I have ruled and am ruling that the Final Decree is final, right or wrong, it's a Final Decree, and this ends it. Thank you very much.

MR. RICE: Note my exception, please, Your Honor.

THE COURT: Surely.

(Whereupon, the defendant confers with Mr. Rice.) . . .

MR. RICE: Your Honor --

THE COURT: Yes, Mr. Rice?

MR. RICE: Ms. Sawyer would like to address the Court on one small issue, if she may.

THE DEFENDANT: Your Honor --

THE COURT: No, sir. Thank you.

MR. LANHAM: Thank you.

END OF EXCERPT ********** (Thereupon, at approximately 10:45 a.m., this proceeding was concluded.)

APPENDIX J

VIRGINIA:
IN THE CIRCUIT COURT OF FREDERICK COUNTY

PRESTON E. CONNER, SR.,
Complainant

v. IN CHANCERY NO: 93-149

AVA M. SAWYER
and
DEAN S. WORCESTER,
Co-Respondents

FINAL DECREE

On the 22nd day of June, 1994, came the parties hereto in person and by counsel for an ore tenus hearing on all issues joined.

After opening statements were made by counsel for each of the parties, the Complainant proceeded to introduce evidence in the form of testimony and exhibits on his behalf and then rested.

On the 23rd day of June, 1994, the Court reconvened and the Co-Respondent Ava M. Sawyer produced certain evidence in the form of testimony and exhibits on her behalf and rested. Thereafter, the Co-Respondent Dean S. Worcester introduced certain evidence in the form of testimony and exhibits on his behalf and rested. There was no rebuttal evidence offered by the Complainant.

WHEREUPON, the Court heard the final arguments by counsel for all the parties and then retired to consider its decision.

After due deliberation and consideration of all the evidence and the authorities cited by counsel for the parties hereto, the

Court is of the opinion that the evidence establishes without contradiction that the written fee agreement was entered into after the attorney-client relationship had begun and therefore in accordance with Stiers v. Hall, 1977 S.E.2d 450, 170 Va. 569 (1938), and Griffin v. Rainer, 186 S.E.2d 10, 212 Va. 627 (1972), the burden shifted to the Co-Respondent Sawyer to prove the validity of the written fee agreement. The Court finds that burden was not carried because essential and relevant provisions were not adequately explained to the Complainant. The Court finds that the written contract included provisions for unliquidated attorneys fees which had the effect of making the attorney a partner in the ownership of the land which was the object of the litigation and which gave the attorney the ability to force the sale of the client's property. The Court finds that the only fee agreement between the parties is the one-third contingent fee on the "betterment" received by the Complainant and that there was no evidence presented which would allow the Court to award any fee greater than the One Hundred Thirty-Four Thousand Dollars ($134,000.00) which amount the Complainant has accepted and concedes to be appropriate.

NOW, THEREFORE, it is ADJUDGED, ORDERED AND DECREED that the fee due to the Co-Respondents, Sawyer and Worcester, is One Hundred Thirty-Four Thousand Dollars ($134,000.00).

It is further ADJUDGED, ORDERED AND DECREED that the balance of the funds held by the Co-Respondent Sawyer and due from the Co-Respondent Sawyer to the Complainant is One Hundred Seventeen Thousand Eighty-Five Dollars and 94/100 ($117,085.94) and that interest shall accrue at the legal rate of 8 percent (8%) from and after July 29, 1992, until paid.

It is further ADJUDGED, ORDERED AND DECREED that the total amount due by the Co-Respondent Sawyer to the Complainant shall be paid not later than July 7, 1994. Co-Respondent Sawyer duly objected and excepted to each of these rulings.

The court being of the opinion that in the absence of some contractual or statutory provision otherwise allowing it, the respective parties are to bear their attorneys fees and costs, it is ADJUDGED, ORDERED AND DECREED that the Complainant's prayer for attorneys fees and court costs expended in the prosecution of this suit is denied. The Complainant duly objected and excepted to the ruling.

It is further ADJUDGED, ORDERED AND DECREED that the Co-Respondent Worcester's prayer for sanctions is denied to which ruling the Co-Respondent Worcester objected and excepted.

Thereafter, the Court proceeded to hear evidence on the issue of the division of the awarded attorneys fees between the Co-Respondents Sawyer and Worcester. The Co-Respondent Sawyer objected to proceeding with the hearing. Upon consideration whereof, it is ADJUDGED, ORDERED AND DECREED that each Respondent is entitled to the sum of Sixty-Two Thousand Dollars ($62,000.00), representing one-half of the balance of the One Hundred Thirty-Four Thousand Dollars ($134,000.00) awarded attorneys fees, after deducting the Ten Thousand Dollars ($10,000.00) previously divided between the Respondents.

And it further appearing that Co-Respondent Sawyer has received funds sufficient to pay Co-Respondent Worcester the said Sixty-Two Thousand Dollars ($62,000.00) owing to him, it is accordingly

ADJUDGED, ORDERED AND DECREED that the Co-Respondent Sawyer pay forthwith to the Co-Respondent Worcester, through his counsel, John F. Lanham, Esquire, the sum of Sixty-Two Thousand Dollars ($62,000.00). To this ruling of the Court the Co-Respondent Sawyer duly objected and excepted.

It is further ADJUDGED, ORDERED AND DECREED that the transcript of the hearing, if prepared, shall when filed with Clerk of the Court become a part of the record of this cause.

It appearing that nothing further need be done in this regard, it is ADJUDGED, ORDERED AND DECREED, that the Clerk of this Court shall provide to each counsel of record, an attested copy of this decree and then to place this suit among those in chancery ended.

ENTER this *26th* day of August, 1994.

Rudolph Bumgardner III
Rudolph Bumgardner, III
Judge Designate

Endorsement waived pursuant Rule 1:13

David J. Andre, Esquire
Counsel for Complainant

John F. Lanham, Esquire
Counsel for Co-Respondent Worcester

Gregory J. Harris, Esquire
Counsel for Co-Respondent Sawyer

APPENDIX K

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday *the* 16th *day of* March, 2004.

Ava Maureen Sawyer, Appellant,

against Record No. 032231
Circuit Court No. 93-149

Dean S. Worcester, et al., Appellees.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 9th day of January, 2004 and grant a rehearing thereof, the prayer of the said petition is denied.

On further consideration whereof, the appellant's "motion for leave to file amended petition for rehearing" and appellees' [sic] motion to dismiss are denied.

A Copy,

Teste:
[indecipherable signature]
Clerk

APPENDIX L

RELEVANT CONSTITUTIONAL PROVISIONS:

CONSTITUTION OF THE UNITED STATES,
AMENDMENT XIV (in pertinent part):

"nor shall any State deprive any person of life, liberty, or property without due process of law . . .."

CONSTITUTION OF THE UNITED STATES,
AMENDMENT VII (in pertinent part):

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

CONSTITUTION OF VIRGINIA, ARTICLE I,
SECTION 11

. . . That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

APPENDIX M

RELEVANT STATUTORY PROVISOS

VIRGINIA CODE ANNOTATED (1950), *AS AMENDED*
SECTION 8.01-336.

A. The right of trial by jury as declared in Article I, Section 11 of the Constitution of Virginia and by statutes thereof shall be preserved inviolate to the parties.

. . . [provisos applicable only to actions at law omitted]

D. Trial by jury of plea in equity. -- In any action in which a plea has been filed to an equitable claim, and the allegations of such plea are denied by the plaintiff, either party may have the issue tried by jury.

E. Issue out of chancery. -- In any suit in equity, the court may, of its own motion or upon motion of any party, supported by such party's affidavit that the case will be rendered doubtful by conflicting evidence of another party, direct an issue to be tried by a jury.

APPENDIX N

RELEVANT RULES OF THE SUPREME COURT OF VIRGINIA

RULE 1:4 General Provisions as to Pleadings.

. . .

(d) Every pleading shall state the facts on which the party relies in numbered paragraphs, and it shall be sufficient if it *clearly* informs the opposite party of *the true nature of the claim* or defense. [emphasis added]

. . .

(h) The clerk shall note and attest the filing date on every pleading.

. . .

RULE 2:12 Answer.

When the court has entered its order overruling all motions, demurrers and other pleas filed by a defendant, such defendant shall, unless he has already done so, file his answer within twenty-one days after the entry of such order, or within such shorter or longer time as the court may prescribe. . . .

RULE 2:13 Cross-Bill Against Plaintiff.

A defendant may, at any time when he would not be in default if he had not filed a pleading, or thereafter by leave of court, file a cross-bill which seeks relief against the plaintiff but not against other defendants or third parties. When such a cross-bill is filed, it shall not be necessary to issue process thereon against the plaintiff, but the cross-bill shall be served as provided by Rule 1:12 and, in a suit for divorce or for annulling a marriage, shall not be taken for confessed.

The plaintiff shall file his pleadings in response to such cross-bill within twenty-one days after it is served.

RULE 2:14 Cross-Bill Against Codefendants or Third Parties.

A defendant may by cross-bill, filed at any time before he is in default, or thereafter by leave of court, assert against other defendants or against new parties any claim germane to the subject matter of the suit.

Such a cross-bill is a new suit and all provisions of these Rules applicable to bills and subpoenas, except those provisions requiring payment of writ tax and clerk's fees, shall apply to such cross-bills, and all provisions of these Rules applicable to defendants shall apply to parties on whom such cross-bills are served.

APPENDIX O

CONNER'S PRAYERS FOR RELIEF IN HIS PETITION IN EQUITY AGAINST SAWYER AND WORCESTER IN CHANCERY 93-149 IN THE CIRCUIT COURT OF FREDERICK COUNTY, VIRGINIA (EXCEPT CONNER'S INITIAL PRAYERS FOR PRELIMINARY INJUNCTIVE-TYPE RELIEF, NONE OF WHICH WAS GRANTED BY THE COURT)

WHEREFORE, Petitioner prays:

. . .

D. That after considering all circumstances and relevant factors this Court declare invalid and unenforceable any and all provisions of the attorneys fee agreement dated October 12, 1990.

E. That this Court establish [:]
reasonable attorneys fees to be paid to either or both attorneys *under the enforceable provisions, if any*, [emphasis added] of the attorneys fee agreement dated October 12, 1990 and under the Virginia Code of Professional Responsibility
or, in the alternative,
the reasonable value of services rendered based on quantum meruit.

F. That the costs and disbursements of this action be taxed against the Respondents and that the Court award such costs to the Petitioner, including reasonable attorney's fees, in bringing this action.

G. That the Petitioner have such other further and general relief as to equity shall seem meet.

APPENDIX Q

EXCERPTS FROM APPELLANT'S CORRECTED PETITION FOR APPEAL TO THE SUPREME COURT OF VIRGINIA

* * *

CORRECTED PETITION FOR APPEAL

On Petition for Appeal from the Circuit Court of the
County of Frederick (In Chancery No. 93-149)
The Honorable Arthur W. Sinclair, Judge
The Honorable Dennis L. Hupp, Judge

AVA M. SAWYER
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* * *

ASSIGNMENTS OF ERROR

I. THE COURT ERRED IN DENYING SAWYER'S MOTIONS TO VACATE AND QUASH AND IN FINDING SAWYER IN CONTEMPT FOR NOT APPEARING IN PROCEEDINGS TO ENFORCE THE COURT'S PRIOR ORDER TO SAWYER TO PAY WORCESTER $62,000.00 BECAUSE THE COURT HAD HAD NO JURISDICTION TO ADJUDICATE THE LEGAL RIGHTS OF WORCESTER AND SAWYER *INTER-SE* OR TO ORDER SAWYER TO PAY WORCESTER $62,000.00, AND THEREFORE SUCH MONETARY AWARD TO WORCESTER WAS VOID *AB INITIO* AND SUBJECT TO COLLATERAL ATTACK UPON ANY SUBSEQUENT PROCEEDINGS TO ENFORCE THAT SEVERABLE ORDER, REGARDLESS THAT THE DECREE IN WHICH THAT ORDER WAS SET FORTH HAD BECOME FINAL AND NOT SUBJECT TO APPEAL. 11

II. THE COURT ERRED IN NOT RULING THE ORDER TO SAWYER TO PAY MONEY TO HER CO-RESPONDENT VOID *AB INITIO* BECAUSE THE TRIAL COURT HAD HAD NO JURISDICTION TO GRANT WORCESTER ANY AFFIRMATIVE RELIEF BECAUSE WORCESTER HAD FILED NO COMPLAINT IN THE CAUSE. 14

III. THE COURT ERRED IN NOT RULING THE SEVERABLE ORDER TO SAWYER TO PAY MONEY TO HER CO-RESPONDENT VOID *AB INITIO* BECAUSE THE CO-RESPONDENTS WERE NOT ADVERSE PARTIES AND, IN THE ABSENCE OF ADVERSITY, THERE WAS NO JUSTICIABLE CONTROVERSY BETWEEN THE CO-RESPONDENTS, AND THEREFORE THE COURT HAD NO JURISDICTION TO GRANT 1

CO-RESPONDENT WORCESTER *ANY* AFFIRMATIVE RELIEF AGAINST SAWYER.

IV. THE COURT ERRED IN NOT RULING THE MONEY JUDGMENT AWARDED TO CO-RESPONDENT WORCESTER AGAINST CO-RESPONDENT SAWYER VOID *AB INITIO* BECAUSE EVEN *HAD* THERE BEEN A JUSTICIABLE CONTROVERSY BETWEEN THE CO-RESPONDENTS, THE COURT'S AWARD TO WORCESTER WOULD HAVE NONETHELESS BEEN BEYOND ITS JURISDICTION BECAUSE THE COURT'S RULINGS AND 'FINDINGS' WERE *CONTRARY* TO WORCESTER'S *OWN* ALLEGATIONS IN THE CAUSE. 18

V. THE COURT ERRED IN NOT RULING THE ORDER TO SAWYER TO PAY HER CO-RESPONDENT $62,000.00 VOID *AB INITIO* AS BEYOND THE COURT'S JURISDICTION BECAUSE THE TRIAL COURT'S RULINGS WERE PREDICATED ON FACTS AND ISSUES NOT PLEADED AND ON RELIEF NOT REQUESTED IN THE CAUSE, AND WERE ALSO PREDICATED UPON RULINGS ENTIRELY INCONSISTENT WITH CO-RESPONDENT WORCESTER'S OWN ALLEGATIONS IN THE CAUSE. 20

VI. THE COURT ERRED IN UPHOLDING THE MONEY JUDGMENT AWARDED CO-RESPONDENT WORCESTER BECAUSE THE COURT HAD HAD NO JURISDICTION TO AWARD ANY SUCH JUDGMENT BECAUSE THERE WAS NO EVIDENCE ADDUCED TO SUPPORT *ANY* RULING FAVORABLE TO WORCESTER ON THE BASES UPON WHICH WORCESTER HAD ALLEGED ENTITLEMENT TO COMPENSATION. 21

VII. THE COURT ERRED IN UPHOLDING THE MONEY JUDGMENT AWARDED WORCESTER AS SAME WAS VOID *AB INITIO* BECAUSE SAWYER WAS NOT AFFORDED AN ADJUDICATION COMPORTING WITH THE REQUIREMENTS OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION. 22

A) SAWYER WAS NOT AFFORDED REASONABLE NOTICE IN RELATION TO THE WORCESTER-SAWYER ADJUDICATION. 24

B) DUE PROCESS WAS DENIED BECAUSE THE JUDGE ORDERED THE 'WORCESTER-SAWYER TRIAL' REGARDLESS THAT SUCH ORDER VIOLATED THE EXPRESS AGREEMENT OF THE PARTIES. 26

C) SAWYER WAS NOT AFFORDED A REASONABLE OPPORTUNITY TO BE HEARD AND PRESENT HER CLAIMS AND DEFENSES. 27

D) SAWYER WAS NOT AFFORDED A FAIR TRIAL, AN IMPARTIAL TRIBUNAL, OR THE FUNDAMENTAL FAIRNESS MANDATED BY DUE PROCESS OF LAW. 28

VIII. THE COURT ERRED IN UPHOLDING THE MONEY AWARD GRANTED WORCESTER BECAUSE THE TRIAL COURT'S ACTIONS HAD TRANSGRESSED SAWYER'S RIGHTS TO TRIAL BY JURY AND/OR TO 'ISSUES OUT OF CHANCERY.' 29

IX. THE COURT ERRED IN UPHOLDING THE ORDER TO SAWYER TO PAY WORCESTER $62,000.00 BASED UPON ITS FINDING THAT COMPLAINANT CONNER HAD SOUGHT A DETERMINATION OF THE SUMS TO WHICH "EACH" ATTORNEY WAS ENTITLED. 30

X. THE COURT ERRED IN UPHOLDING THE COURT ORDER TO SAWYER TO PAY WORCESTER $62,000.00 ON THE BASIS OF CONNER'S PRAYER FOR A JUDICIAL DETERMINATION OF THE REASONABLE ATTORNEYS FEES TO BE PAID TO "EITHER OR BOTH" OF THE ATTORNEYS BECAUSE SUCH PRAYER DID NOT CLEARLY AND SPECIFICALLY REQUEST A DETERMINATION OF THE CO-RESPONDENT'S RELATIVE RESPECTIVE RIGHTS TO THE CONTINGENCY FEE THAT HAD BEEN EARNED. 32

XI. THE COURT ALSO ERRED BY REFUSING TO SCHEDULE ANY HEARING OR ADJUDICATION UPON CO-RESPONDENT SAWYER'S OBJECTIONS THAT SHE HAD NOT BEEN AFFORDED DUE PROCESS OF LAW IN RELATION TO THE TRIAL COURT'S AWARD OF A MONEY JUDGMENT TO WORCESTER AGAINST HER, AND IN DISMISSING SAWYER'S OBJECTIONS TO THE VALIDITY OF WORCESTER'S JUDGMENT ON SUCH GROUNDS AS WITHOUT MERIT BECAUSE NOT INVOLVING THE JURISDICTION OF THE COURT, AND/OR ON THE GROUNDS THAT SUCH DID NOT CONSTITUTE GROUNDS FOR A COLLATERAL ATTACK ON WORCESTER'S JUDGMENT. 33

XII. THE COURT ERRED IN RULING THAT THE VARIOUS DEPRIVATIONS OF DUE PROCESS OF LAW (INCLUDING THE DEPRIVATION OF SAWYER'S RIGHTS TO TRIAL BY JURY AND/OR OF OPPORTUNITY TO SEEK ISSUES OUT OF CHANCERY) WHICH SAWYER RAISED AS JURISDICTIONAL OBJECTIONS TO THE VALIDITY OF THE MONEY AWARD GRANTED HER CO-RESPONDENT AGAINST HER WERE NOT JURISDICTIONAL IN NATURE, AND ALSO IN RULING THAT THAT ORDER IS NO LONGER SUBJECT TO VACATION ON GROUNDS THAT SUCH ORDER WAS ENTERED IN VIOLATION OF SAWYER'S U. S. CONSTITUTIONAL RIGHTS TO THE DUE PROCESS OF LAW AND TO TRIAL BY JURY. 33

XIII. NO RULING ENTERED IN THE FREDERICK COUNTY CIRCUIT SUBSEQUENTLY TO THE FINAL DECREE HAS BEEN A VALID BECAUSE JUDGE BUMGARDNER WAS SPECIFICALLY DESIGNATED BY THE CHIEF JUDGE OF THE SUPREME COURT OF VIRGINIA TO ACT IN IN CHANCERY 93-149, AND JUDGE BUMGARDNER'S APPOINTMENT TO ADJUDICATE IN RESPECT TO THAT CAUSE HAS NEVER BEEN ALTERED OR REVOKED, AND NO ONE ELSE HAS BEEN APPOINTED IN HIS STEAD TO ADJUDICATE IN RESPECT TO THAT CAUSE. 34

XIV. SAWYER COULD NOT HAVE PROPERLY BEEN CONVICTED OF CONTEMPT OF COURT AS THERE WAS NO EVIDENCE THAT SHE HAD *ANY INTENT* TO ACT IN CONTEMPT OF COURT, AND SHE CLEARLY BELIEVED THAT THAT COURT HAS HAD NO JURISDICTION OVER HER TO ACT TO ENFORCE THE MONEY AWARD GRANTED WORCESTER AGAINST HER. 34

XV. SAWYER COULD NOT HAVE PROPERLY BEEN CONVICTED OF CONTEMPT OF COURT AS THE ONLY DEBTOR INTERROGATORY PROCEEDING WITH WHICH SHE HAS *EVER* BEEN SERVED NOTICE WAS ISSUED OUT OF A FICTITIOUS CAUSE AND, ALSO, IN RESPECT TO HER CONVICTION OF CONTEMPT IN RESPECT TO THE PROCEEDINGS SAID TO HAVE BEEN SCHEDULED BEFORE JUDGE HUPP, SHE HAD BEEN SERVED WITH NO NOTICE WHATSOEVER IN RESPECT TO THOSE INTERROGATORIES. 34

QUESTIONS PRESENTED

I. WHEN A SEVERABLE MONEY AWARD UNSUPPORTED BY JURISDICTION AND VOID *AB INITIO* IS SET FORTH IN A FINAL DECREE THAT IS NOT SUBJECT TO APPEAL, MAY SUCH SEVERABLE MONEY JUDGMENT BE COLLATERALLY ATTACKED IN SUBSEQUENT PROCEEDINGS INITIATED TO ENFORCE THAT VOID MONEY JUDGMENT?
ASSIGNMENT OF ERROR # I

II. DOES A COURT OF EQUITY HAVE JURISDICTION TO AWARD MONETARY RELIEF AGAINST ONE RESPONDENT IN FAVOR OF ANOTHER RESPONDENT WHO HAS FILED NO CROSS-BILL?
ASSIGNMENTS OF ERROR # I, II

III. MUST THERE ALWAYS BE ADVERSITY BETWEEN PARTIES DEFENDANT FOR A DECREE TO BE BINDING IN RESPECT TO THEIR RIGHTS *INTER-SE*?
ASSIGNMENTS OF ERROR # I, III

IV. MAY THE WORD "EITHER" OR THE WORDS "EITHER OR BOTH" PROPERLY BE CONSTRUED AS MEANING "EACH"?
ASSIGNMENT OF ERROR # IX

V. MAY THE WORD "EITHER" OR THE WORDS "EITHER OR BOTH" PROPERLY BE CONSTRUED AS MEANING "EACH" IF THE JURISDICTION OF A COURT TO CONDUCT AN ADJUDICATION BETWEEN DEFENDANTS DEPENDS UPON THE MEANING OF THE WORD "EITHER" OR THE WORDS "EITHER OR BOTH"?
ASSIGNMENT OF ERROR # IX

VI. WHEN POST-JUDGMENT JURISDICTIONAL OBJECTIONS TO THE VALIDITY OF A MONEY JUDGMENT ARE RAISED, MAY SUCH JURISDICTIONAL OBJECTIONS PROPERLY BE OVERRULED WHEN TO DO SO DEPENDS UPON THE COMPLAINT IN ISSUE BEING CONSTRUED POST-TRIAL DIFFERENTLY THAN IT WAS CONSTRUED BY THE COURT AND ALL PARTIES TO THE CAUSE BOTH PRE-TRIAL AND DURING THE TRIAL ON THE COMPLAINT?
ASSIGNMENTS OF ERROR # IX, X

VII. WHEN POST-JUDGMENT JURISDICTIONAL OBJECTIONS TO THE VALIDITY OF A MONEY JUDGMENT ARE RAISED, MAY SUCH JURISDICTIONAL OBJECTIONS PROPERLY BE OVERRULED WHEN TO DO SO DEPENDS UPON THE COMPLAINT IN ISSUE BEING CONSTRUED POST-TRIAL DIFFERENTLY THAN ITS MEANING AS SAME WAS STIPULATED TO BY ALL OF THE PARTIES AND COUNSEL TO THE CAUSE PRIOR TO THE TRIAL?
ASSIGNMENTS OF ERROR # IX, X

VIII. DOES A COURT OF EQUITY HAVE JURISDICTION TO ADJUDICATE IN RESPECT TO FACTS, ISSUES, AND/OR RELIEF NOT PLEADED OR PRAYED IN THE CAUSE BEFORE THE COURT?
ASSIGNMENTS OF ERROR # I, V

IX. DOES A COURT OF EQUITY HAVE JURISDICTION TO AWARD A LITIGANT RELIEF ON A BASIS ENTIRELY DIFFERENT FROM THE BASIS UPON WHICH THE LITIGANT ASSERTED ENTITLEMENT TO RELIEF IN HIS PLEADINGS?
ASSIGNMENTS OF ERROR # I, IV, V

X. IS A COURT ORDER VOID AB INITIO WHEN NO EVIDENCE WAS ADDUCED IN SUPPORT OF THE ALLEGATIONS OF ENTITLEMENT ASSERTED IN THE CAUSE?
ASSIGNMENTS OF ERROR # I, VI

XI. ARE CHALLENGES TO A COURT ORDER ON THE GROUNDS THAT IT WAS ENTERED IN THE ABSENCE OF NOTICE AND/OR AN ADJUDICATION COMPORTING WITH U. S. CONSTITUTIONAL REQUIREMENTS OF DUE PROCESS OF LAW JURISDICTIONAL IN NATURE?
ASSIGNMENTS OF ERROR # I, VII, XI, XII

XII. IS A MONEY JUDGMENT ENTERED BY A COURT IN VIOLATION OF APPLICABLE STATUTES, REGULATORY PROCEDURES OR PROVISIONS, AND/OR THE REQUIREMENTS OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE U. S. CONSTITUTION OR OTHER U. S. CONSTITUTIONAL PROVISOS VOID *AB INITIO* AND SUBJECT TO SUBSEQUENT COLLATERAL ATTACK?
ASSIGNMENTS OF ERROR # I, VII, VIII, XI, XII